



**SUPERIOR COURT, COUNTY OF CONTRA COSTA**  
**MILITARY DIVERSION INFORMATION SHEET**

**A. ELIGIBILITY CRITERIA**

1. Defendant is charged with:
  - a. Misdemeanors
  - b. Felonies subject to the following exclusions:
    - i. Murder or voluntary manslaughter.
    - ii. An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.
    - iii. Rape.
    - iv. Lewd or lascivious act on a child under 14 years of age.
    - v. Assault with intent to commit rape, sodomy, or oral copulation in violation of Section 220.
    - vi. Commission of rape or sexual penetration in concert with another person in violation of Section 264.1.
    - vii. Continuous sexual abuse of a child in violation of Section 288.5.
    - viii. A violation of subdivision (b) or (c) of Section 11418.
2. Defendant is a current or former member of the United States military.
3. Defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse or mental health problems as a result of his or her military service.
4. Defendant consents to being placed on military diversion and waives his or her rights to a speedy trial.

**B. EXCLUSIONARY CONSIDERATIONS**

1. Defendants with a prior conviction for the same or similar offense are frequently better served by a post-conviction referral to Veterans Treatment Court as opposed to a grant of military diversion. For individuals with a history of the same or similar offenses, the Court will take into account whether they have previously received services to treat conviction-connected mental health issues. If so, they will be better served by Veterans Treatment Court, which provides a higher level of structure and supervision for participants, while potentially earning a dismissal of the criminal conviction pursuant to Penal Code Section 1170.9.

### **C. PROCESS OF ADMISSION**

1. At any time prior to the entry of a plea, defense counsel, the District Attorney's office, or the Court, can refer a veteran or military defendant to Department 10. Reach out to Department 10 for the upcoming hearing dates. Defense counsel will appear at 8:30 a.m. for the pre-court staffing meeting.
2. Unless the individual has been referred to Department 10 by the District Attorney's Office, at least one week prior to the hearing date, counsel must file documents outlining the defendant's eligibility and suitability for diversion. Those documents must contain the following information:
  - a. Brief description of the defendant's background regarding military service
  - b. Explanation of the nexus between the defendant's eligible condition and the military service.
  - c. If necessary, a request for the court to seal any confidential health information from the public record.
  - d. DD-214 (Certificate of Release or Discharge from Active Duty) unless the defendant has already established Veteran's Administration (VA) healthcare eligibility.
3. If at the hearing the court finds the defendant is eligible for military diversion and that a grant of military diversion is appropriate, the Court will grant military diversion for a period not to exceed two years, postponing the criminal proceedings for that time period. The Court will impose conditions of the diversion program (ie: treatment programs). Review hearings will be set to show proof of enrollment/compliance as follows:
  - a. 1-3 months - every month
  - b. 3-5 months - every 60 days (so 1 time)
  - c. 5-8 months - every 90 days (so 1 time)
  - d. 8-18 months - every 5 months (2 more times)
  - e. Subject to greater frequency if relapse/non-compliance
4. At each review, Probation will verify that the defendant has remained in compliance with the law.
5. At each review, the defendant will present proof of compliance with the treatment plan.

### **D. EXAMPLES OF CONDITIONS OF MILITARY DIVERSION**

1. Twelve to 24 months of treatment.
2. Protective order (JC Form CR-160) for the duration of the diversion program (DV cases).
3. Approved DV program for domestic violence cases.

4. DUI classes for DUI cases.
5. Random drug and alcohol testing by the treatment provider.
6. Substance abuse or other counseling, therapy or treatment as recommended in the assessment and/or treatment plan.

**E. SUCCESSFUL COMPLETION**

1. At the end of the period of military diversion, if the defendant has performed satisfactorily, the Court will dismiss the criminal charges.
2. The arrest will be deemed to have never occurred, except that (1) the Department of Justice will be notified of the disposition of the case; (2) the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to a peace officer application request; and (3) the defendant is still obligated to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer as defined in Penal Code Section 830. Defendant must be advised of (2) and (3).

**F. UNSUCCESSFUL COMPLETION**

If it appears to the Court that the defendant is performing unsatisfactorily in the military diversion program, or is not benefitting from the treatment and services provided, the Court will set a hearing to determine whether the defendant shall be terminated from the military diversion program and the criminal proceedings reinstated.